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11 SECURITIES AND EXCHANGE COMMISSION
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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION

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18 SECURITIES AND EXCHANGE COMMISSION, Case No. 37/ex/262; 3/DNH
19 Plaintiff,
20 v.
21 JOHN MCENERY III,
22 Defendant.

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[PROPOSED] FINAL JUDGMENT AS TO
JOHN MCENERY III

24 The Securities and Exchange Commission having filed a Complaint and Defendant John
25 McEnergy III having entered a general appearance; consented to the Court's jurisdiction over
26 Defendant and the subject matter of this action; consented to entry of this Final Judgment without
27 admitting or denying the allegations of the Complaint (except as to jurisdiction and except as
28

1 otherwise provided herein in paragraph IV); waived findings of fact and conclusions of law; and
2 waived any right to appeal from this Final Judgment:

3 I.

4 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's
5 agents, servants, employees, attorneys, and all persons in active concert or participation with them
6 who receive actual notice of this Final Judgment by personal service or otherwise are permanently
7 restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange
8 Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder
9 [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the
10 mails, or of any facility of any national securities exchange, in connection with the purchase or sale of
11 any security:

- 12 (a) to employ any device, scheme, or artifice to defraud;
13 (b) to make any untrue statement of a material fact or to omit to state a material fact
14 necessary in order to make the statements made, in the light of the circumstances
15 under which they were made, not misleading; or
16 (c) to engage in any act, practice, or course of business which operates or would
17 operate as a fraud or deceit upon any person.

18 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal
19 Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual
20 notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents,
21 servants, employees, and attorneys; and (b) other persons in active concert or participation with
22 Defendant or with anyone described in (a).

23
24 II.

25 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and
26 Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation
27 with them who receive actual notice of this Final Judgment by personal service or otherwise are
28 permanently restrained and enjoined from violating Section 14(e) of the Exchange Act [15 U.S.C.

1 § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] promulgated thereunder, in connection with any
2 tender offer or request or invitation for tenders, from engaging in any fraudulent, deceptive, or
3 manipulative act or practice, by:

- 4 (a) purchasing or selling or causing to be purchased or sold the securities sought or to be
5 sought in such tender offer, securities convertible into or exchangeable for any such
6 securities or any option or right to obtain or dispose of any of the foregoing securities
7 while in possession of material information relating to such tender offer that
8 Defendant knows or has reason to know is nonpublic and knows or has reason to know
9 has been acquired directly or indirectly from the offering person; the issuer of the
10 securities sought or to be sought by such tender offer; or any officer, director, partner,
11 employee or other person acting on behalf of the offering person of such issuer, unless
12 within a reasonable time prior to any such purchase or sale such information and its
13 source are publicly disclosed by press release or otherwise; or
- 14 (b) communicating material, nonpublic information relating to a tender offer, which
15 Defendant knows or has reason to know is nonpublic and knows or has reason to know
16 has been acquired directly or indirectly from the offering person; the issuer of the
17 securities sought or to be sought by such tender offer; or any officer, director, partner,
18 employee, advisor, or other person acting on behalf of the offering person of such
19 issuer, to any person under circumstances in which it is reasonably foreseeable that
20 such communication is likely to result in the purchase or sale of securities in the
21 manner described in subparagraph (a) above, except that this paragraph shall not apply
22 to a communication made in good faith
- 23 i. to the officers, directors, partners or employees of the offering person, to its
24 advisors or to other persons, involved in the planning, financing,
25 preparation or execution of such tender offer;
- 26 ii. to the issuer whose securities are sought or to be sought by such tender
27 offer, to its officers, directors, partners, employees or advisors or to other

1 persons involved in the planning, financing, preparation or execution of the
2 activities of the issuer with respect to such tender offer; or

3 iii. to any person pursuant to a requirement of any statute or rule or regulation
4 promulgated thereunder.

5 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal
6 Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual
7 notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents,
8 servants, employees, and attorneys; and (b) other persons in active concert or participation with
9 Defendant or with anyone described in (a).

10 III.

11 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is
12 liable for disgorgement of \$32,482, representing profits gained as a result of the conduct alleged in
13 the Complaint, together with prejudgment interest thereon in the amount of \$4,919.25, and a civil
14 penalty in the amount of \$64,156 pursuant to Section 21A(a)(1)(A) of the Exchange Act [15 U.S.C. §
15 78u-1(a)(1)(A)], for a total of \$101,557.25. Defendant shall satisfy this obligation by paying
16 \$101,557.25 to the Securities and Exchange Commission within 14 days after entry of this Final
17 Judgment.

19 Defendant may transmit payment electronically to the Commission, which will provide
20 detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a
21 bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>.
22 Defendant may also pay by certified check, bank cashier's check, or United States postal money order
23 payable to the Securities and Exchange Commission, which shall be delivered or mailed to

25 Enterprise Services Center
26 Accounts Receivable Branch
27 6500 South MacArthur Boulevard
28 Oklahoma City, OK 73169

1 and shall be accompanied by a letter identifying the case title, civil action number, and name of this
2 Court; John McEnery III as a defendant in this action; and specifying that payment is made pursuant
3 to this Final Judgment.

4 Defendant shall simultaneously transmit photocopies of evidence of payment and case
5 identifying information to the Commission's counsel in this action. By making this payment,
6 Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the
7 funds shall be returned to Defendant. The Commission shall send the funds paid pursuant to this
8 Final Judgment to the United States Treasury.

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10 The Commission may enforce the Court's judgment for disgorgement and prejudgment
11 interest by moving for civil contempt (and/or through other collection procedures authorized by law)
12 at any time after 14 days following entry of this Final Judgment. Defendant shall pay post judgment
13 interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.
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15 IV.

16 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for purposes of
17 exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the
18 allegations in the complaint are true and admitted by Defendant, and further, any debt for
19 disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under this Final
20 Judgment or any other judgment, order, consent order, decree or settlement agreement entered in
21 connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws
22 or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy
23 Code, 11 U.S.C. § 523(a)(19).
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1 V.
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3 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is
4 incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall
5 comply with all of the undertakings and agreements set forth therein.

6 VI.
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8 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain
9 jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

10 VII.
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12 There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil
13 Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.
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15 Dated: September 10, 2015 
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20 UNITED STATES DISTRICT JUDGE